

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ERIN RILEY, Complainant, vs. DAKOTA ACCESS, LLC, Respondent.	DOCKET NO. FCU-2016-0006 (HLP-2014-0001)
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ORDER DISMISSING COMPLAINT

(Issued July 19, 2016)

BACKGROUND

On March 31, 2016, Erin Riley filed an application for rehearing in Docket No. HLP-2014-0001. Riley asks the Utilities Board (Board) to reconsider the “Standard Easement Rights Revised” filed by Dakota Access, LLC (Dakota Access), on March 16, 2016, and require an amendment to address an indemnity clause related to damages and liability for general negligence and premises liability. In a “Statement of Position, Comments” filed on April 12, 2016, Riley also argues Dakota Access is not bargaining in good faith when negotiating voluntary easements in lieu of condemnation proceedings. Riley argues that Dakota Access’ attorneys refuse to include provisions in a voluntary easement that the Board has required in the Agricultural Impact Mitigation Plan (AIMP) and condemnation proceedings.

On April 15, 2016, Dakota Access filed a resistance to the motion. In that resistance, Dakota Access argues that Riley cannot seek rehearing because: 1) Riley was not a party to the proceeding and therefore lacks standing; 2) the Board has granted it the right of eminent domain over Riley's property and the motion does not state why Riley should be treated differently from other similarly affected landowners; and 3) Riley is requesting inappropriate relief by asking the Board to craft an indemnity provision. Dakota Access asserts Riley lacks standing to request rehearing because Riley did not intervene, testify, file prepared testimony, or file an objection in the HLP-2014-0001 docket at any point in time.

Riley filed a response to the resistance on April 22, 2016. The Response argued that Riley should be permitted to seek rehearing. Riley states she could not meaningfully participate or present evidence at the hearing since she had no reason to intervene by the intervention deadline in July of 2015. Riley also argues that as a landowner of a parcel potentially subject to eminent domain, she is inherently a party and has standing. Riley states she has been in negotiations with Dakota Access' attorneys for approximately one year, and it was only when talks broke down that she had a reason to file with the Board.

Riley states further that she was only ever offered one contract and one lump sum before her parcel was listed on Exhibit H in Docket No. HLP-2014-0001. The voluntary easement she was offered did not refer to the AIMP. She also challenges whether she and the other owners of the parcel received proper notice. Finally, Riley challenges the language included or excluded in the voluntary easement agreement sent to her by Dakota Access. Riley challenges language regarding the company's

liability for damages to livestock and other items she requested to be added to the voluntary easement agreement.

In its April 28, 2016, order, the Board stated it would treat Riley's application for rehearing as a complaint and docketed it as Docket No. FCU-2016-0006. The Board required Dakota Access to file additional comments within seven calendar days of the order, and Riley and OCA to file any additional response within 14 calendar days of the order.

On May 5, 2016, Dakota Access filed an additional response after Riley's request for rehearing was docketed as a complaint. Dakota Access again argues that the Board should not grant indemnification rights and has previously rejected the same suggestion in other cases. *See In re: ITC Midwest, LLC*, Docket No. E-22156. Dakota Access states that the Iowa Code already requires it to pay actual damages caused by entering, using, or occupying the lands. Dakota Access also argues that it is bargaining in good faith and has attempted to work with Riley's own proposed easement agreement by incorporating the AIMP by reference. Dakota Access also asserts that the Board does not have the power to force parties to enter into voluntary easements with specific terms; the Board can only determine the scope of condemnation easements. Finally, to the extent Riley is arguing it did not provide proper notice, Dakota Access states that it complied with Iowa Code § 479B.4 by sending notice to Riley.

On June 20, 2016, Dakota Access filed a supplemental response stating that the parties had reached an agreement for a voluntary easement. Dakota Access

states that this occurred back on May 16, 2016. Dakota Access therefore asked the Board to dismiss the complaint as moot.

On June 27, 2016, Riley filed an additional complaint stating that Dakota Access was beginning construction prior to receiving completed voluntary easements from all parties with an interest in the land and without making all of the necessary payments to the landowners. Riley states Dakota Access sent a "48-hour Notice of Commencement of Construction" on June 17, 2016. However, it had not received signed agreements from all parties at that time. Riley states Dakota Access would therefore be starting construction without all necessary permits being met.

On July 5, 2016, Dakota Access filed a response to the additional complaint. Dakota Access states that it has made all payments required by the voluntary easement agreement. It argues further that the easement agreement granted it the right to enter the property prior to final payments being made and that any delay in the payments was caused by Riley. It states that Riley signed the voluntary easement on May 16, 2016. Other parties with an interest in the land had signed voluntary easement agreements in 2015; they were simply asked to sign a new easement identical to what Riley agreed to in May 2016.

On July 11, 2016, Riley filed additional comments in response to Dakota Access' response. Riley disputes Dakota Access' assertion that she caused the delay in the payments and asserts Dakota Access and its attorneys have acted unprofessionally. She also asserts Dakota Access entered into the voluntary agreement without the intention of honoring it in full.

BOARD DISCUSSION

Riley raises several issues in her initial complaints. She argues that Dakota Access should be required to include an indemnification clause and otherwise bargain in good faith respecting the voluntary easement clauses. She also argues that Dakota Access did not provide proper notice, and began construction before all of the necessary easements were completed.

The Board finds that the issues regarding the bargaining for specific language contained in the voluntary easement are moot. Dakota Access states that the parties have since come to an agreement for a voluntary easement, and Riley acknowledges this in her most recent comments. Since the parties have reached a voluntary agreement, the portions of the complaint regarding the specifics of easement agreement are now moot and will be dismissed.

Riley also argues that Dakota Access did not provide proper notice of the public informational meeting because the notice was not sent to all seven interstate Grantors for the easements sought on the parcel at issue. Iowa Code § 479B.4 required Dakota Access to give notice of the informational meeting to “each landowner affected by the proposed project and each person in possession of or residing on the property.” Section 479B.4 further defines “landowner” as “a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property.” Dakota Access asserts that it complied with the requirements of Iowa Code § 479B.4. Riley does not assert that Dakota Access did not send notice to the landowner or parties in possession as defined by that section, but instead argues that Dakota Access was required to send notice to all parties with

an interest in the land and failed to do so. Since Iowa Code § 479B.4 only requires notice to be sent to certain persons with an interest in the land rather than all such parties, the Board will also dismiss the complaint on this issue.

Finally, Riley complains that Dakota Access sent out a notice of intent to commence construction on June 17, 2016, before all of the landowners had signed a voluntary easement and all required payments were made. Dakota Access responded that all of the other persons with interest in the land at issue had previously signed easements in 2015, and the easement signed by Riley on May 16, 2016, allowed Dakota Access the right to enter onto the property before the payments were completed.

The Board allowed Dakota Access to begin construction in those areas where it had secured all required permits, authorizations, approvals, and easements in its June 7, 2016, Order Granting Motion in Docket No. HLP-2014-0001. Although neither party provides a copy of the voluntary easement, in her most recent comments Riley does not dispute that Dakota Access has secured all voluntary easements and made all required payments per the agreement. She does not dispute having received notice. While she believed in her June 27, 2016, complaint that Dakota Access “will be in breach for construction,” the record does not show that Dakota Access thereafter actually did commence construction in violation of any of the Board’s orders in Docket No. HLP-2014-0001. Riley’s most recent comments also do not follow-up on that belief or otherwise assert that Dakota Access went on to act in a manner contrary to the Board’s directives. The Board will therefore dismiss the complaint on this issue as well.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The complaint in Docket No. FCU-2016-0006, filed by Erin Riley against Dakota Access, LLC, is dismissed.

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Elizabeth S. Jacobs

ATTEST:

/s/ Trisha M. Quijano
Executive Secretary, Designee

/s/ Nick Wagner

Dated at Des Moines, Iowa, this 19th day of July 2016.